

01-20-04
Express Mail No.: ER 466114565 US

365
01/30/04
#11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :

BUONCUORE

Application No.: 09/931,998

Filed: 08/17/2001

For: RAIL CAR LID LIFTER

Docket No. SB1

Confirmation No.: 4180

Group Art Unit: 3652

Examiner: Keenan, James W.

Mail Stop Non-Fee Amendment

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

RECEIVED

JAN 23 2004

GROUP 3600

RESPONSE

This communication is in response to the Office Action dated 11/19/2003.

Claims 1, 3-5, 7-11, 13 and 14 are pending in the application, the Notice of Allowance mailed 7/29/2003 having been vacated by the examiner.

The applicant notes with appreciation that claims 4, 5, 7, 10, 11, 13 and 14, which are objected to as being dependent upon a rejected base claim, would be allowable if rewritten in independent including all of the limitations of the base claims and any intervening claims.

Claims 1, 3, 8, and 9 are rejected under 35 USC 102(b) as being anticipated by Glass et al. (US 3,759,399 of record). The examiner asserts,

"Glass et al. show a fork lift accessory comprising a lifter capable of lifting, removing and replacing a rail car lid, including a base configured

as a pallet for fork truck handling, as seen in figure 1, frame 16 coupled to the base, and boom 18-19 having at its distal end a fitting 22,27 which could engage a rail car lid handle, wherein the boom has generally parallel upper and lower surface spaced at the distal end which could fit within an open sided space of a lid handle and wherein the assembly of the boom, frame and base could clearly stand freely upon the ground when not in use. Note that the rail car lid *per se* is not a positively recited limitation; thus, since the apparatus of Glass et al. could be used, without structural modification, to manipulate a rail car lid in the manner set forth, it is considered to fully anticipate the claims.”

Applicant respectfully traverses this assertion. The fitting 22, 27 shown in Figure 1 of the cited reference is described in column 2 line 6 as a “slide member”. The Abstract, starting on the fifth line above the bottom, says “-is free to slide along the boom section.”. Element 22 is associated, via intervening elements, with “load hook 27” (see column 3 line 32). The function of this combination (see column 4) is to lock the assembly in a selected position only when the boom or hook is tilted (column 4 line 20). Even assuming that the distal end of the boom of Glass et al by happenstance was so configured that it fitted within the open side space of the handle of a particular lid (and there is no teaching to insure this) the sliding assembly 20, 27 would slide as it is designed to do and the handle would not be secured at the end of the boom by the inevitable forces parallel to the boom transmitted from the handle to the sliding fitting as the boom is thrust into the space in the handle and the hook would not engage. The fitting of Glass et al 22,27 is as shown and described not capable of “engaging the lid handle” as that term must be interpreted from the text of the instant application. Only by fastening that assembly to the boom – a structural modification – would the configuration of Glass et al be capable of reliably lifting, removing and replacing a rail car lid. This would negate the function of the invention of Glass et al. which addresses easy adjustment of the location of the shackle.

As argued previously, the boom of Glass et al is telescopic. Such an extensible boom is not suited to the thrusting operation of the instant invention. Threading the end

of the telescopic boom into the opening in the lid handle would collapse the sections of the boom if any reasonable longitudinal force is applied to the end of the boom. To function as does the applicant's invention, the sections would require pinning – another structural modification.

To one of skill, it is plain that the configuration of Glass et al. lifts loads only with a hook on a sliding shackle. In practice, more often than not, a bridle would be used. Hook 27 of that design is the operative element but in the field the requirements of OSHA mean that an operator must actuate some kind of a safety latch on such a hook (not shown). This involves an operator having to climb up to the top of the railcar and walk over the lid of the rail car for a “hands on” operation at the handle which is a hazardous and time consuming step. The work would have to be done by at least one man in addition to the forklift operator who is controlling the end of the boom. There also is a related safety issue. All these rail car lids have a functional rack which is used for stacking the lids on top of one another in the yard. The job of stacking the removed lids using the apparatus of Glass et al. similarly would require the additional worker who would be subject to the hazard of climbing onto the stack of lids and hooking, or unhooking, the gear at close quarters.

The instant invention lifts directly with the boom end with the handle of the rail car lid engaged with at least one fitting on the upper surface of the distal end of the boom. After placement of the lid, the forklift operator easily disengages the boom from the handle. Because no local adjustment is required, the configuration of applicant's invention permits the one man operating the forklift to do all the work – lid removal, lid stacking, lid replacement - in relative safety and with greater efficiency.

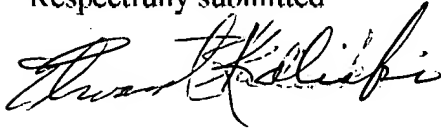
The structure of the instant invention and that of the reference differ for the simple reason that they lift differently. Glass et al provides a sliding hook locatable by the operator from which an engaged load may then be hung. The hook is the interface between the load and the boom which is operated by the fork lift. The applicant provides a boom “-having generally at the distal end at least one fitting for engaging the lid handle”. The lifting is by the boom and the at least one fitting fixed to its upper surface. The sliding fitting of Glass et al is not an equivalent of the fixed fitting(s) of the

applicant. For example, see page 4 line 20 of the applicant's specification where saddle 30 is described as "bolted".

Applicant respectfully points out that Glass et al (US 3,759,399) does not anticipate the instant application for the reasons above and the rejection should be withdrawn. As the rejected claims are allowable, the objected-to claims should become allowable.

With all due respect, applicant asks that the examiner pass this application to allowance as presently claimed.

Respectfully submitted



Edward J. Kaliski
Agent for Applicant
Registration No. 28,622

DATED January 16, 2004

One Gracie Terrace – 12F
New York, NY 10028
Phone and Fax: 212-879-3599